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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,364	10/07/2003	Charles A. Miller	RWZ/78U	4643
26875 7590 05/15/2007 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER KUMAR, RAKESH	
			ART UNIT 3654	PAPER NUMBER
			MAIL DATE 05/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/680,364	Applicant(s) MILLER, CHARLES A.	
	Examiner Rakesh Kumar	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/05/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 60/424,616 fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The above priority Application does not provide support for selected claims of this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,6-10,12,14, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson (U.S. Patent No. 5,577,612) in view of Lavery (U.S. Patent No. 4,974,771).

3. Referring to claims 1, 2 and 6. Chesson discloses a dispenser carton (Figure 3 and 4) for containing a plurality of articles comprising:

a plurality of walls including a bottom wall (518) spaced from a top wall (511), a pair of spaced side walls (514, 516) and a pair of spaced end walls (528, 536), the side (514, 516) and end walls (528, 536), extending between the top (511) and bottom walls (518);

a plurality of flaps (532 and 526) extending from at least some of the walls (514 and 518), the end walls (528 and 536) being formed by combination of the flaps (when flaps 532,513,530,531 and 526 are folded to make the end walls of the dispenser see Figure 4);

a corner of the carton formed by one of the end walls (536) and either the top wall (511) or the bottom wall (518); and

a dispenser portion (534) for dispensing articles from the carton, the dispenser portion of the carton being formed from more than one of the flaps (flaps 513,531 and 522 see Figure 6) and at least in part from the corner (end wall and the top wall) to define a dispenser opening for exposing an article for removal from the carton (see Figure 6);

wherein the dispenser portion (534) does not include either of the side walls (514, 516).

Chesson does not disclose the dispenser portion of the carton being defined by at least one tear line formed in more than one of the flaps.

Lavery discloses a can carrier (Figure 1 and 4) wherein the dispenser portion (defined by tear lines 54,56 and 58; Figure 4) of the carton (16) being defined by at least one tear line (one of 54,56 or 58) formed in more than one of the flaps(42 and 46) and at least in part from the corner (see corner created by tear line 56; Figure 2 and 4) to define a dispenser opening for exposing an article for removal from the carton (16).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Chesson to include a dispenser portion of the carton being defined by at least one tear line formed in more than one of the flaps as taught by Lavery (see Figure 4) because the flaps could be removed individually thus making it easier to create the dispenser opening of the carton.

4. Referring to claims 3 and 18. Chesson discloses a dispenser carton (Figure 3 and 4) wherein the dispenser portion (534) is hingedly (580) attached to the top wall (510).

5. Referring to claims 7 and 8. Chesson discloses a dispenser carton (Figure 3 and 4) wherein at least one retaining panel (531,513; Figure 3) adjacent the dispenser opening (334) to retain the remaining articles in the carton.

6. Referring to claim 9. Chesson discloses a dispenser carton (Figure 3 and 4) wherein a height of the at least one retaining panel (531,513; Figure 3) is over half of the height of the one end wall (528, 536).

7. Referring to claim 10. Chesson discloses a dispenser carton (Figure 3 and 4) wherein a width of the at least one retaining (531,513; Figure 3) panel is less than half of the width of the one end wall (528, 536).

8. Referring to claim 12. Chesson discloses all the claimed features, but does not teach a handle opening disposed in the top wall.

Lavery discloses a handle opening (see opening between perforation lines 66 and 72; Figure 1) in the top wall.

9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson and includes a handle as taught by Lavery because it would make carrying the container easier.

10. Referring to claims 14 and 15. Chesson discloses a dispenser carton (Figure 3 and 4) wherein a pair of spaced tear lines (586, 588) each extending through the one end wall (536) and each tear line extends to the top wall (534).

11. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson in view of Lavery as applied to claim 1 above, and further in view of Montealegre (U.S. Patent Number 4,340,170).

12. Referring to claims 4 and 5. Chesson in view of Lavery disclose all the claimed features in addition to a tab edge (547; Figure 3) disposed on the bottom corner of the container to provide for easy in lifting the dispenser portion (534), but do not teach of a finger hole located on the bottom corner.

However, Montealegre discloses a finger aperture (102; Figure 4) used to lift a embedded strap (92) formed on the cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teaching of Chesson in view of Lavery and include a finger aperture as taught Montealegre and position the aperture at the leading edge of the dispenser portion near the bottom corner of the container to provide for easy lifting of the dispenser portion.

13. Claims 11 and 19-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson in view of Lavery and Montealegre as applied to claim 4 above, and further in view of Carroll (U.S. Patent Number 5,921,398).

14. Referring to claims 11 and 19-78. See claim rejection above. Chesson discloses all the claimed features, but does not teach the dispenser opening extending the entire height of the one end wall.

However, Carroll discloses a dispenser opening extending the entire height of the one end wall (see height of member 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson in view of Lavery and extend the dispenser opening to be the entire height of the end walls as taught by Carroll because a larger opening would provide a greater access to the articles within the container.

Regarding claims 19-21 and 25 see Office paragraph 8.

Regarding claims 22,36, see Office paragraph 9.

Regarding claims 23,24, see Office paragraph 16.

Regarding claims 26,27, see Office paragraph 10.

Regarding claims 28,38, see Office paragraph 11.

Regarding claims 29,39, see Office paragraph 12.

Regarding claims 30,40, see Office paragraph 20.

Regarding claims 31,41, see Office paragraph 22.

Regarding claims 32,33, see Office paragraph 13.

Regarding claims 34,35, see Office paragraph 23.

Regarding claims 37, see Office paragraphs 8-10,16 and 18.

Regarding claim 42, see Office paragraphs 13 and 23.

Regarding claim 43-64 and 66-78, see Office Action above.

Regarding claim 65. Regarding method claim 65, although Chesson in view of Montealegue do not explicitly disclose a method of using their apparatus, the method steps recited in the claims would inherently be performed when using the apparatus of Chesson in view of Montealegue in its usual and expected fashion.

15. Claims 13,16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson in view of Lavery, Montealegre and Carroll as applied to claim 11 above, and further in view of Matsummura (U.S. Patent Number 5,690,213).

16. Referring to claim 13. Chesson discloses all the claimed features, but does not teach the dispenser portion being adapted to be releasably inserted into the handle opening.

Matsummura discloses a display carton (Figure 1) wherein a dispenser portion (13) is incorporated with a tab (29) to be releasably inserted into slot (30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson to have included the teaching of Matsummura and insert the dispenser portion of Chesson into a slot disposed on top of the container that can further be used as a handle because it would allow the dispenser portion tab to be secured.

17. Referring to claims 16 and 17. Chesson discloses all the claimed features, but does not teach of the tear lines extending along a juncture between the top and side wall.

Carrel discloses a dispensing carton wherein each tear line (58, 60) extends along a juncture between the top wall and one of the side walls(54, 56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson and align the tear lines (582, 584) of Chesson such they extend along a juncture between the top and the side walls as taught by Carrell, because the dispenser opening would be larger and the articles would not catch the sides when being removed from the container.

Regarding claim 17 the fold line of Chesson extend through the top panel (511) and join the tear lines (584; 582; Figure 3).

Response to Arguments

18. Applicant's arguments filed 09/08/2006 have been fully considered but they are not persuasive. See modified rejections above.

19. The applicant states claims 15-17 and 66-78 were not specifically rejected in the Office Action filed 05/17/2006 thus believes the subject mater to be in condition for allowance. The Office directs the applicant's attention to paragraph number 13 stating

rejection for claim 15, paragraph number 23 for rejection pertaining to claims 16 and 17 and paragraph 18 for rejections pertaining to claims 66-78.

The Applicant argues on page 26 (Remarks) distinctive difference in the Applicants embodiment over the cited art of Chesson in the Office, however the claimed limitations do not recite the structure as argued, thus amended claims do not traverse the prior art rejections, see modified rejection above.

Referring to claims 1, 19, 37, 43, 55 and 63, Applicant argues "the dispenser portion is formed from more than one of the flaps." As stated in the rejection above, the dispensing portion as taught by Chesson (see Figure 6; Chesson in view of Figure 3) is formed from more than one of the flaps.

Referring to claim 65, Applicant argues the dispenser is formed by "portions of more than one of the flaps." In the view of the Office the dispenser of Chesson is formed by portions of more than one of the flaps.

Conclusion

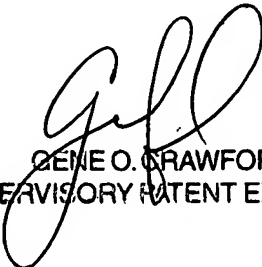
20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RK
May 11, 2007


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER